

## **MEMORANDUM**

June 29, 2004

TO: Files

FROM: Luis de la Torre  
Counsel to Commissioner Goldschmid

RE: Regulation NMS, Release Nos. 34-49325 (Feb. 26, 2004) and 34-49749  
(May 20, 2004), File No. S7-10-04

On June 23, 2004, Catherine Kinney, Robert McSweeney, and Andrew Blocker of the New York Stock Exchange, Inc. met with Commissioner Harvey J. Goldschmid and myself, counsel to the Commissioner. Ms. Kinney and Messrs. McSweeney and Blocker expressed views that they expect to be included in the Exchange's comment letter on proposed Regulation NMS. They discussed the concept of an automated market under Regulation NMS and how it relates to the automatic execution facility currently under consideration by the Exchange; the role of the Intermarket Trading System; and the trade-through rule of Regulation NMS, including the opt-out provision. They expressed concerns about the opt-out provision and about the application of the access fee cap of Regulation NMS to an exchange, and, on the subject of market data, generally urged the Commission to simplify its proposal and follow Seligman Committee recommendations.